

U.S. DEPARTMENT OF LABOR
Office of Workers' Compensation Programs

DECISION OF THE HEARING REPRESENTATIVE

In the matter of the claim for compensation under Title 5, U.S. Code 8101 et. seq. of Manis V. Long, employed by the Department of Agriculture, Camilla, Georgia, case file number 06-2086703. The hearing was held on November 8, 2005, in Atlanta, Georgia.

The issue is whether or not the Office met its burden of proof to terminate compensation and medical benefits

The Department of Agriculture employed the claimant, Manis V. Long, born June 18, 1946, as a food inspector in Camilla, Georgia. On May 19, 2003, the claimant tripped and fell on an air line in the performance of his job duties. He timely filed a claim that was initially accepted by the Office for closed fracture of the head of the right distal radius. Following a second opinion examination the claim was subsequently expanded to include accepted of a herniated disc C6-7. The claimant stopped work on May 20, 2003, and did not return.

Medical documentation from the claimant's treating physician, D.Q. Harris, M.D., an orthopaedic specialist, indicated the claimant could return to work with restrictions of no overhead work or work requiring repetitive right elbow, forearm, or wrist motions. The employing establishment indicated it could not accommodate the restrictions with regard to no repetitive motions. The employer indicated it could accommodate the weight and overhead work restrictions.

By office note of October 6, 2003, Dr. Harris indicated the claimant had no restrictions with regard to the right elbow fracture. The remaining restrictions were related to the herniated cervical disc. Dr. Harris also noted he suspected carpal tunnel syndrome which he did not indicate to be related to the work incident of May 19, 2003.

On October 7, 2003, Edmund Molis, M.D., a referral neurologist, stated that the claimant had a restriction for no prolonged neck bending or bouncing or any downward pressure on the head. The claimant was referred to Gerald N. Kadis, M.D., for evaluation regarding the herniated cervical disc.

The claimant was referred for a second opinion examination to determine if there was a causal relationship between the accepted work incident and the claimant's cervical spine condition and to determine the nature and extent of any injury-related residuals. He was examined by Robert S. Pilcher, M.D., a Board-certified orthopaedic surgeon, on October 4, 2004. Dr. Pilcher was provided with a statement of accepted facts and the case medical records.

Dr. Pilcher related an accurate factual and medical history, noted his review of the medical records, and provided physical examination findings. Dr. Pilcher diagnosed right radial head fracture, right shoulder strain, right carpal tunnel syndrome, and cervical strain. Dr. Pilcher opined that the elbow fracture healed without a problem and was at maximum medical improvement, and the claimant could continue his regular duty. Dr. Pilcher noted an underlying cervical condition with some degenerative changes in the neck. He noted the claimant's cervical symptoms were fairly minimal and he opined the claimant could return to regular duty. Dr. Pilcher opined that the work incident caused the increased neck pain. He did not recommend surgery at that point. Dr. Pilcher indicated that the claimant could return to his full-time regular job duties.

By letter dated November 3, 2003, the Office requested that Dr. Harris review and comment on Dr. Pilcher's report. The Office specifically requested that Dr. Harris indicate whether he agreed that the claimant could return to his date of injury job. The Office did not request that Drs. Molis or Kadis, who were currently treating the claimant, comment on Dr. Pilcher's report.

The Office advised the claimant it had accepted the condition of displaced cervical intervertebral disc without myelopathy as related to the work injury of May 19, 2003.

By letter dated November 5, 2004, Dr. Harris advised that he last saw the claimant on February 6, 2004, and indicated the claimant could engage in "activity as tolerated". He did not provide any specific work restrictions although stated he agreed with Dr. Pilcher's assessment.

The Office referred the claimant for an independent medical examination to resolve a conflict in medical opinion regarding the nature and extent of any injury-related medical residuals and disability. As noted, Dr. Harris did not clearly indicate that the claimant was able to return to his date of injury job, and the claimant was actively under treatment with Drs. Kadis and Molis. The claimant was examined by Robert A. Bartosh, M.D., a Board-certified orthopaedic surgeon, on December 20, 2004. Dr. Bartosh was provided with a statement of accepted facts and the case record.

Dr. Bartosh's report of December 20, 2004, related an accurate factual and medical history. He commented on his review of the case records. He noted the claimant underwent right carpal tunnel release surgery in November, 2004. Dr. Bartosh provided physical examination findings. Dr. Bartosh's impression was a work-related radial head fracture for which the claimant had reached maximum medical improvement, carpal tunnel syndrome, surgically treated and not related to the injury, and cervical strain with pre-existing degenerative disc disease resulting in a central herniation at C6-7. Dr. Bartosh stated the only true objective findings were the lack of ten degrees of motion in the right elbow and the healed surgical incision from the carpal tunnel release. Dr. Bartosh noted he could not detect any significant objective residuals attributable to the work injury that would cause the claimant disability. He stated the claimant could return to duty as a poultry inspector. Dr. Bartosh noted he would be hesitant to recommend any cervical surgery given the fact that the claimant has neck pain without objective neurologic weakness in the upper extremity.

By letter dated January 6, 2005, the Office requested that Dr. Bartosh provide clarification of his opinion. The Office asked Dr. Bartosh to indicate whether the accepted work incident aggravated the claimant's pre-existing degenerative disc disease at C6-7.

By letter dated January 13, 2005, Dr. Bartosh opined that the work injury did aggravate the claimant's condition in that the fall probably caused the degenerative disc to herniate. He opined that the aggravation was a permanent condition. Dr. Bartosh specified that he had not changed his opinion that the claimant had reached maximum medical improvement from the injuries to his right upper extremity and he did think the patient could return to work as a poultry inspector.

By letter dated January 18, 2005, the Office advised the claimant that it proposed to terminate his wage-loss compensation for the reason that the weight of the medical evidence established that his injury-related disability had ceased. The Office determined that Dr. Bartosh's opinion represented the weight of the evidence although the decision did not clearly advise the reasons for that determination. The decision noted that the claimant had no objective injury-related medical residuals.

The Office received additional medical evidence that was insufficient to refute the findings and opinion of Dr. Bartosh. The documentation offered no reasoned medical opinion regarding the nature and extent of any continuing injury-related disability.

By decision dated February 25, 2005, the Office terminated the claimant's wage loss compensation and medical benefits. The claimant disagreed with that decision and by letter postmarked March 21, 2005, his attorney, Paul Felser, requested an oral hearing. The hearing was held on November 8, 2005, in Atlanta, Georgia. Mr. Felser was present and proceeded on behalf of the claimant, who did not appear.

The hearing transcript of Mr. Felser's arguments is of record. Mr. Felser discussed in detail the reasons he disagreed with Dr. Bartosh's report, which he felt was conclusory, lacking in rationale, and inconsistent with the reported physical findings. Mr. Felser noted that Dr. Bartosh did not indicate the accepted fracture was cured without permanent injury or that no further medical care or treatment would be necessary in the future. He noted that the final decision terminated both wage-loss compensation and medical benefits. Mr. Felser also argued that the claimant's concurrent non-work-related carpal tunnel syndrome and every other condition should have been considered with regard to the definition of suitable employment. Mr. Felser believed Dr. Bartosh's conclusion regarding the permanent aggravation, as manifested by the herniated cervical disc, was inconsistent as a herniated disc had already been accepted and represented an objective finding.

Additional evidence was received following the Office decision and at and after the hearing. Most of the evidence consisted of additional duplicate copies of documents already of record. The new evidence included: a March 21, 2005, letter from Dr. Kadis; a May 3, 2005, report from Arthur J. Pasach, M.D.; and, April 7, 2005, lumbar x-ray and MRI reports.

Dr. Kadis' letter of March 21, 2005, stated that the claimant had been seen with the cervical myelogram and MRI that were had performed in Gainesville some months prior. Dr. Kadis

indicated he had looked at those and did not see anything terribly striking. Dr. Kadis noted the claimant's main complaint that day seemed to be in his low back and right hip. Dr. Kadis did not comment on the claimant's work capabilities. He noted he was going to schedule a lumbar MRI and make the claimant an appointment for an impairment rating and disability assessment from Dr. Arthur Pasach, their physiatrist.

Dr. Pasach's report of May 3, 2005, is not clearly based on an accurate history of injury. Dr. Pasach notes that the claimant also injured his low back in the May 19, 2003, work incident. The Office has not accepted a low back injury and a low back injury is not described in the prior medical documentation of record. Dr. Pasach states that the claimant stated his right carpal tunnel syndrome was related to the work injury. The Office has not accepted that the claimant's right carpal tunnel syndrome was caused or contributed to by the accepted work incident. Dr. Pasach stated the claimant had extremely limited function capacity and was awarded Social Security Disability. Dr. Pasach noted other severe medical problems including degenerative arthritis of the lumbar spine, cervical spondylosis, diabetes mellitus type II, gout, hypertension, and degenerative joint disease of the right hip and knee. Dr. Pasach provided physical examination findings and an impairment rating. He did not discuss the claimant's work capabilities with respect to the accepted work-related injuries.

The employing establishment submitted comments in response to its review of the hearing transcript. The comments essentially noted the employer's assessment of the evidence and included an opinion from its medical officer. The employer's response was not certified as having been provided to the claimant. The employing agency physician's opinion is not based on a complete and accurate factual and medical background or physical examination of the claimant, and it is therefore lacking in probative value.

I have reviewed the evidence of record and find that the Office did meet its burden of proof to terminate compensation for the reason that the weight of the medical evidence establishes that the claimant has no continuing injury-related medical residuals or disability. I further find that the Office improperly terminated the claimant's entitlement to medical benefits.

The Office may terminate or suspend compensation benefits only under certain specified circumstances: when a claimant refuses an offer of suitable employment; when the Office establishes that the disability for which compensation has been paid has ceased or is no longer causally related to the employment injury; when a claimant refuses to assign or prosecute an action in his own name as required by the Secretary under section 8131(b) of the Act; and under section 8123 of the Act when a claimant fails to undergo or obstructs a scheduled medical examination.¹

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits. After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.²

¹William C. Austin, 39 ECAB ___ (1988)

²Adina D. Blanco, 39 ECAB ___ (1988)

When a case is referred to a referee medical specialist for the purpose of resolving a conflict in medical opinion, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight³

The Office decision of February 25, 2005, correctly found that the weight of the medical evidence rested with the referee specialist, Dr. Bartosh, although the decision failed to discuss the reasons for that determination. Dr. Bartosh provided a comprehensive examination and report including rationalized opinion that the claimant's injury-related disability had ceased

The claimant's then treating physician, Dr. Harris indicated the claimant had no restrictions with regard to the right elbow fracture as of October 6, 2003. The remaining restrictions were related to the herniated cervical disc. On October 7, 2003, Edmund Molis, M.D., a referral neurologist, stated that the claimant had a restriction for no prolonged neck bending or bouncing or any downward pressure on the head.

The claimant underwent a second opinion examination with Dr. Pilcher on October 4, 2004. Dr. Pilcher noted the claimant's cervical symptoms were fairly minimal and he opined the claimant could return to regular duty. The Office requested that Dr. Harris review and comment Dr. Pilcher's report and specifically requested that Dr. Harris indicate whether he agreed that the claimant could return to his date of injury job. Dr. Harris did not clearly indicate whether or not the claimant was capable of returning to full unrestricted duty, and there were no current work restrictions provided by Drs. Kadis or Molis.

The Office referred the claimant for an independent medical examination to resolve the conflict in medical opinion regarding the nature and extent of any injury-related medical residuals and disability. The referee physician, Dr. Bartosh, provided a comprehensive and sufficiently rationalized report based on an accurate factual and medical history and physical examination, and his opinion is afforded special weight. Dr. Bartosh stated the only true objective findings were the lack of ten degrees of motion in the right elbow and the healed surgical incision from the carpal tunnel release. The doctor acknowledged that the herniated cervical disc existed and was causally related to the work injury. He examined the claimant's neck and noted slight decreased rotation and excellent cervical flexion and extension. Dr. Bartosh noted he could not detect any significant objective residuals attributable to the work injury that would cause the claimant disability and he opined that the claimant could return to duty as a poultry inspector. There is no rationalized medical evidence that establishes otherwise.

There is no requirement that the Office consider every pre-existing, concurrent, or post-injury acquired condition when the medical evidence demonstrates that the claimant no longer has disabling residuals of the accept work-related injuries. In the instant case, the weight of the medical evidence establishes that the claimant has no remaining injury-related disability. The Office, in such circumstances, is not required to make a formal finding that the date of injury job is medically suitable, as it may be in circumstances involving an offer of a modified-duty position where the claimant continues to have injury-related disability.

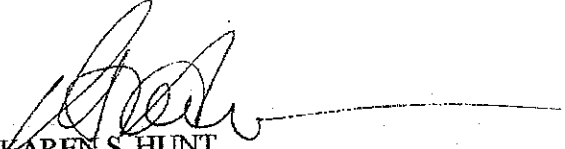
³ *Wiley Richey*, 49 ECAB ____ (Docket No. 94-2367, issued November 7, 1997)

The Office decision of February 25, 2005, additionally terminated the claimant's entitlement to medical benefits. The Office must provide notice before terminating all medical treatment.⁴ The Office did not send the claimant the required pre-termination notice with regard to a proposal to terminate those benefits. Further, the Office decision did not discuss the reasons it determined that the claimant's entitlement to medical benefits for the accepted injuries should be terminated. The Office decision must be reversed in that regard.

Accordingly, the decision of the district office dated February 25, 2005, is hereby affirmed in part and reversed in part and the case record is returned for actions consistent with this decision, including reinstatement of medical benefits.

DATED: JAN 25 2006

WASHINGTON, D C



KAREN S HUNT
Hearing Representative
For
Director, Office of Workers'
Compensation Programs

⁴ FECA Procedure Manual, 2-1400-6(b)(4)